

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION - LOS ANGELES**

Z PRODUX, INC.

Plaintiff,

v.

OFRA COSMETICS, LLC

Defendant.

OFRA COSMETICS, LLC

Counter Claimant

v.

Z PRODUX, INC.

Counter Defendant

CASE NO.

**2:12-CV-05040 DDP (MRWx)**

Complaint Filed: June 6, 2012

**Honorable Dean D. Pregerson,**  
United States District Court Judge

**STIPULATED PROTECTIVE ORDER**

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1 **1 [A] PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order does  
7 not confer blanket protections on all disclosures or responses to discovery and that  
8 the protection it affords from public disclosure and use extends only to the limited  
9 information or items that are entitled to confidential treatment under the applicable  
10 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,  
11 that this Stipulated Protective Order does not entitle them to file confidential  
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
13 followed and the standards that will be applied when a party seeks permission from  
14 the court to file material under seal.

15 **1 [B] GOOD CAUSE STATEMENT**

16 This action involves intellectual property claims and cross claims, specifically  
17 including a design patent. This action is likely to involve trade secrets, customer lists,  
18 supplier lists, pricing lists, business methodologies and other valuable research,  
19 development, commercial, financial, technical and/or proprietary information for  
20 which special protection from public disclosure and from use for any purpose other  
21 than prosecution of this action is warranted. The parties assert that confidential and  
22 proprietary materials and information consist of, among other things, confidential  
23 business or financial information, information regarding confidential business  
24 practices, or other confidential research, development, or commercial information  
25 (including information implicating privacy rights of third parties), information  
26 otherwise generally unavailable to the public, or which may be privileged or  
27 otherwise protected from disclosure under state or federal statutes, court rules, case  
28 decisions, or common law.

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a Protective Order for such information is justified in this matter.

It is the express intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

The parties, Z Produx on the one hand, and Ofra Cosmetics, on the other hand, therefore stipulate to the following terms and procedures, and jointly request that this Honorable Court enter this Stipulated Protective Order.

## **2. DEFINITIONS**

### **2.1 Action:**

Z Produx, Inc. v Ofra Cosmetics, LLC, USDC/Central California Case No. 12-CV-05040 DDP RZx.

### **2.2 Challenging Party:**

A Party or Non-Party that challenges the designation of information or items under this Order.

### **2.3 “CONFIDENTIAL”:**

Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under *FED.R.CIV.P.*, Rule 26[c]), and as specified above in the Good Cause Statement.

### **2.4 “ATTORNEY EYES ONLY”**

Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under *FED.R.CIV.P.*, Rule 26[c]), and as specified above in the Good Cause Statement.

1 Attorney Eyes Only designation is a higher protection level than  
2 Confidential. See below re: disclosure limitations.

3 **2.5 Counsel:**

4 Outside Counsel of Record, House Counsel (as well as their support  
5 staff), counsel for any third party and their staff.

6 **2.6 Designating Party:**

7 A Party or Non-Party that designates information or items that it  
8 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
9 “ATTORNEY EYES ONLY” (“AEO”).

10 **2.7 Disclosure or Discovery Material:**

11 All items or information, regardless of the medium or manner in which  
12 it is generated, stored, or maintained (including, among other things, testimony,  
13 transcripts, and tangible things), that are produced or generated in disclosures  
14 or responses to discovery in this matter.

15 **2.8 Expert:**

16 A person with specialized knowledge or experience in a matter pertinent  
17 to the litigation who has been retained by a Party or its counsel to serve as an  
18 expert witness or as a consultant in this Action.

19 **2.9 House Counsel:**

20 Attorneys who are employees of a party to this Action, e.g. “Corporate”  
21 or In House Lawyers. House Counsel does not include Outside Counsel of  
22 Record or any other outside counsel.

23 **2.10 Outside Counsel of Record:**

24 Attorneys who are not employees of a party to this Action but are  
25 retained to represent or advise a party to this Action and have appeared in this  
26 Action on behalf of that party or are affiliated with a law firm which has  
27 appeared on behalf of that party, and includes support staff.

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**2.11 Non-Party:**

Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

**2.12 Party:**

Any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and In House Counsel, and Outside Counsel of Record (and their support staffs).

**2.13 Producing Party:**

A Party or Non-Party from whom production of Disclosure or Discovery Material is sought in this Action.

**2.14 Professional Vendors:**

Persons or entities that provide litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

**2.15 Protected Material:**

Any Disclosure or Discovery Material that is designated as CONFIDENTIAL or ATTORNEY EYES ONLY (AEO).

**2.16 Receiving Party:**

A Party that receives Disclosure or Discovery Material from a Producing Party.

**3. SCOPE OF PROTECTION**

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also:

- [1] any information copied or extracted from Protected Material;
- [2] all copies, excerpts, summaries, or compilations of Protected Material;
- [3] any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial shall be governed by the orders of the  
2 Trial Judge to be determined by the Court prior to trial.

#### 3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations  
5 imposed by this Order shall remain in effect until a Designating Party agrees  
6 otherwise in writing or a court order otherwise directs. Final disposition shall be  
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
8 or without prejudice; and (2) final judgment herein after the completion and  
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
10 including the time limits for filing any motions or applications for extension of time  
11 pursuant to applicable law.

12 It is the intent of the parties that their respective confidential information be  
13 accorded the utmost protection from disclosure such to fully maintain their legitimate  
14 property rights.

#### 15 **5. DESIGNATING PROTECTED MATERIAL**

##### 16 **5.1 Exercise of Restraint/Care in Designating Material for Protection.**

17 Each Party or Non-Party that designates information or items for  
18 protection under this Order must take care to limit any such designation to  
19 specific material that qualifies under the appropriate standards. The  
20 Designating Party must designate for protection only those parts of material,  
21 documents, items, or oral or written communications that qualify so that other  
22 portions of the material, documents, items, or communications for which  
23 protection is not warranted are not swept unjustifiably within the ambit of this  
24 Order. Mass, indiscriminate, or routinized designations are prohibited.

25 Designations that are shown to be clearly unjustified or that have been  
26 made for an improper purpose (*e.g.*, to unnecessarily encumber the case  
27 development process or to impose unnecessary expenses and burdens on other  
28 parties) may expose the Designating Party to sanctions.

1           If it comes to a Designating Party's attention that information or items  
2           that it designated for protection do not qualify for protection, that Designating  
3           Party must promptly notify all other Parties that it is withdrawing the  
4           inapplicable designation.

## 5           **5.2 Manner and Timing of Designations**

6           Except as otherwise provided in this Order (See, *e.g.*, second paragraph  
7           of section 5.2[a] below), or as otherwise stipulated or ordered, Disclosure or  
8           Discovery Material that qualifies for protection under this Order must be  
9           clearly so designated before the material is disclosed or produced, either as  
10          CONFIDENTIAL or ATTORNEY EYES ONLY ("AEO" may be used for  
11          Attorney Eyes Only designations).

12          Designation in conformity with this Order requires:

13           [a] for information in documentary form (*e.g.*, paper or  
14           electronic documents, but excluding transcripts of depositions or  
15           other pretrial or trial proceedings), that the Producing Party affix  
16           at a minimum, the legend "CONFIDENTIAL" (hereinafter  
17           "CONFIDENTIAL legend"), to each page that contains protected  
18           material. If only a portion or portions of the material on a page  
19           qualifies for protection, the Producing Party also must clearly  
20           identify the protected portion(s) (*e.g.*, by making appropriate  
21           markings in the margins). A Party or Non-Party that makes  
22           original documents available for inspection need not designate  
23           them for protection until after the inspecting Party has indicated  
24           which documents it would like copied and produced. During the  
25           inspection and before the designation, all of the material made  
26           available for inspection shall be deemed "CONFIDENTIAL."

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After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

[b] For testimony given in depositions where the Designating Party identifies the Disclosure or Discovery Material (protected testimony) on the record before the close of the deposition.

[c] For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

### **5.3 AEO Disclosure Limitations**

Disclosure or Discovery Material (inclusive of deposition testimony) may be marked AEO (Attorney Eyes Only). Matter so marked may only be disclosed to Outside Counsel, their staff, the Court, Court Reporter and retained Experts/Consultants. The material may not be disclosed to the client nor any other person or entity absent specific party stipulation or Court order. Prior to any such Disclosure, any intended recipient hereunder shall execute Exhibit A hereto (except the Court).



#### 5.4 Consent To Be Bound

No person or entity (excepting only the Court) may be permitted access to CONFIDENTIAL or AEO matter without first fully executing the Consent attached hereto.

#### 5.5 Inadvertent Failures to Designate

If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Protective Order.

### 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

#### 6.1 Timing of Challenges

Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

#### 6.2 Meet and Confer

The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 *et seq.*

#### 6.3 Burden

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

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## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

### 7.1 Basic Principles

A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

### 7.2 Disclosure of Confidential Information or Items

Unless otherwise ordered by the Court, or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

- [a] the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- [b] the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- [c] Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- [d] the court and its personnel;
- [e] court reporters and their staff;
- [f] professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action;

1 [g] the author or recipient of a document containing the information  
2 or a custodian or other person who otherwise possessed or knew the  
3 information;

4 [h] during their depositions, witnesses, and attorneys for witnesses,  
5 in the Action to whom disclosure is reasonably necessary. Pages of  
6 transcribed deposition testimony or exhibits to depositions that reveal  
7 Protected Material may be separately bound by the court reporter and  
8 may not be disclosed to anyone except as permitted under this Stipulated  
9 Protective Order; and

10 [I] any mediator or settlement officer, and their supporting personnel,  
11 mutually agreed upon by any of the parties engaged in settlement  
12 discussions.

13 With the exception of Item [d] above, as to all the above, no disclosure shall  
14 be made unless and until any such person shall have fully executed the  
15 “Acknowledgment and Agreement to Be Bound” attached hereto and incorporated  
16 herein as Exhibit A (Disclosure to the Court under this Agreement is NOT a  
17 public/unprotected disclosure).

18 The party seeking to disclose must notify the non-disclosing party at least ten  
19 (10) days prior to disclosure to permit any challenge. Notification shall include a  
20 copy of the executed Acknowledgment and Agreement to Be Bound. Court reporters  
21 shall be exempt from the minimum 10 day notice, but shall execute the  
22 Acknowledgment as soon as possible and prior to taking any testimony.

23 The parties shall meet and confer prior to filing any challenge/motion and  
24 provide a declaration of same at time of filing. *See*, ¶ 6. The provisions of this  
25 paragraph shall apply to ¶ 5 (AEO) designations (§§ 5.3).

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1 **8. PROVISIONS GOVERNING PROTECTED MATERIAL**  
2 **SUBPOENAED IN THIS ACTION OR AS SUBPOENAED**  
3 **OR ORDERED PRODUCED IN OTHER LITIGATION**

4 If a Party is served with a subpoena, or a court order issued in other litigation,  
5 that compels disclosure of any information or items designated in this Action as  
6 “CONFIDENTIAL,” that Party must:

7 [a] promptly notify in writing the Designating Party. Such  
8 notification shall include a copy of the subpoena or court order;

9 [b] promptly notify in writing the party who caused the subpoena or  
10 order to issue in the other litigation that some or all of the material  
11 covered by the subpoena or order is subject to this Protective Order.  
12 Such notification shall include a copy of this Stipulated Protective  
13 Order; and

14 [c] cooperate with respect to all reasonable procedures sought to be  
15 pursued by the Designating Party whose Protected Material may be  
16 affected. If the Designating Party timely seeks a protective order, the  
17 Party served with the subpoena or court order shall not produce any  
18 information designated in this action as “CONFIDENTIAL” before a  
19 determination by the court from which the subpoena or order issued,  
20 unless the Party has obtained the Designating Party’s permission.

21 The Designating Party shall bear the burden and expense of  
22 seeking protection in that court of its confidential material and nothing  
23 in these provisions should be construed as authorizing or encouraging  
24 a Receiving Party in this Action to disobey a lawful directive from  
25 another court.

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1 **9. NON-PARTY'S PROTECTED MATERIAL**

2 [a] The terms of this Order are applicable to information produced by a Non-  
3 Party in this Action and designated as "CONFIDENTIAL." A Party engaging in Third  
4 Party Discovery shall provide a copy of this Protective Order with such Third Party  
5 Discovery. Any information produced by Non-Parties in connection with this  
6 litigation is protected by the remedies and relief provided by this Protective Order.  
7 Nothing in these provisions should be construed as prohibiting a Non-Party from  
8 seeking additional protections.

9 [b] In the event that a Party is required, by a valid discovery request, to  
10 produce a Non-Party's confidential information in its possession, and the Party is  
11 subject to an agreement with the Non-Party not to produce the Non-Party's  
12 confidential information, then the Party shall: (1) promptly notify in writing the  
13 Requesting Party and the Non-Party that some or all of the information requested is  
14 subject to a confidentiality agreement with a Non-Party; (2) promptly provide the  
15 Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant  
16 discovery request(s), and a reasonably specific description of the information  
17 requested; and (3) make the information requested available for inspection by the  
18 Non-Party, if requested.

19 [c] If the Non-Party fails to seek a protective order from this court within  
20 14 days of actually receiving the notice and accompanying information, the Receiving  
21 Party may produce the Non-Party's confidential information responsive to the  
22 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
23 Party shall not produce any information in its possession or control that is subject to  
24 the confidentiality agreement with the Non-Party before a determination by the court.  
25 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
26 of seeking protection in this court of its Protected Material.

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## 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately [a] notify in writing the Designating Party of the unauthorized disclosures; [b] use its best efforts to retrieve all unauthorized copies of the Protected Material; [c] inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and [d] request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

## 11. INADVERTENT PRODUCTION

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in *Federal Rule of Civil Procedure*, Rule 26(b)(5)(B).

This provision is **not** intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

Pursuant to *Federal Rule of Evidence*, 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

## 12. MISCELLANEOUS

### 12.1 Right to Further Relief

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

### 12.2 Right to Assert Other Objections

By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective  
 2 Order. Similarly, no Party waives any right to object on any ground to use in  
 3 evidence of any of the material covered by this Protective Order.

### 4 **12.3 Filing Protected Material**

5 A Party that seeks to file under seal any Protected Material must comply  
 6 with Civil Local Rule 79-5.

7 Protected Material may only be filed under seal pursuant to a court order  
 8 authorizing the sealing of the specific Protected Material at issue.

9 If a Party's request to file Protected Material under seal is denied by the  
 10 court, then the Receiving Party may file the information in the public record  
 11 unless otherwise instructed by the court.

## 12 **13. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in paragraph 4, within 60  
 14 days of a written request by the Designating Party, each Receiving Party must return  
 15 all Protected Material to the Producing Party or destroy such material. As used in this  
 16 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
 17 summaries, and any other format reproducing or capturing any of the Protected  
 18 Material.

19 Whether the Protected Material is returned or destroyed, the Receiving Party  
 20 must submit a written certification to the Producing Party (and, if not the same person  
 21 or entity, to the Designating Party) by the 60 day deadline that:

22 [1] identifies (by category, where appropriate) all the Protected  
 23 Material that was returned or was destroyed, and

24 [2] affirms that the Receiving Party has not retained any copies,  
 25 abstracts, compilations, summaries or any other format copying,  
 26 reproducing or capturing any of the Protected Material.

27 Notwithstanding this provision, Counsel are entitled to retain an archival copy  
 28 of all pleadings, motions, trial, deposition, and hearing transcripts, legal memoranda,



1 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
2 and consultant and expert work product, even if such materials contain Protected  
3 Material.

4 Any such archival copies that contain or constitute Protected Material remain  
5 subject to this Protective Order as set forth in Section 4 (DURATION).

6 **14. VIOLATION**

7 Any violation of this Order may be punished by any and all appropriate  
8 measures including, without limitation, contempt proceedings and/or monetary  
9 sanctions as this Court deems just.

10 *IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD*

11 DATED: August 6, 2015

12 /s/ Robert D. Katz

/s/ Steele N. Gillaspey

13 \_\_\_\_\_  
14 Robert D. Katz,  
Attorney for Z PRODUX

\_\_\_\_\_  
Steele N. Gillaspey,  
Attorney for OFRA

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16 FOR GOOD CAUSE SHOWN, IT IS SO **ORDERED**.

17 ENTERED: August 11, 2015

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19 UNITED STATES MAGISTRATE JUDGE

20 Michael R. Wilner

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**PROTECTIVE ORDER EXHIBIT A**  
*Z Produx, Inc v Ofra Cosmetics, LLC* Case No. 12-CV-05040  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
\_\_\_\_\_  
[full address & telephone], declare under penalty of perjury that I was provided a  
copy, that I have read in its entirety, and that I fully understand the Stipulated  
Protective Order that was issued by the United States District Court for the Central  
District of California in this Action. I agree to comply with and to be bound by all the  
terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any information  
or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order. I further agree to submit  
to the jurisdiction of the United States District Court, Central District California for  
the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
enforcement proceedings occur after termination of this action. I hereby appoint  
THORNSSES LITIGATION SERVICE, 501 West Broadway, Suite 1000, San Diego, CA  
92101 as my California agent for service of process in connection with this action or  
any proceedings related to enforcement of this Stipulated Protective Order, agree to  
pay all costs, and authorize service by email or mail as though personally served.

DATE:

\_\_\_\_\_  
PRINT OR TYPE NAME

\_\_\_\_\_  
SIGNATURE

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